

## **CERTIFICATE OF NEED**

### **ADMINISTRATIVE RULES**

(By authority conferred on the department of public health by sections 2226, 2233, 22106, 22123, and 22135 of Act No. 368 of the Public Acts of 1978, as amended, and section 9 of Act No. 380 of the Public Acts of 1965, as amended, being §§S333.2226, 333.2233, 333.22106, 333.22123, 333.22135, and 16.109 of the Michigan Compiled Laws)

### **PART 1. GENERAL PROVISIONS**

#### **R 325.9101 Definitions; A to F.**

Rule 101. As used in these rules:

- (a) "Applicant" means the person applying for a certificate of need.
- (b) "Application" means the forms provided by the department that are currently in effect and any information or documentation prespecified in the forms to be provided as attachments or supplements. The application provided by the department shall be developed after consultation with representatives of regional certificate of need review agencies and facilities and agencies subject to certificates of need.
- (c) "Appropriate regional certificate of need review agency" means the regional certificate of need review agency designated by the department pursuant to section 22226 of the code within whose geographical review area a project is proposed to be located.
- (d) "Bureau" means the administrative unit of the department designated by the director as responsible for the certificate of need program.
- (e) "Code" means Act No. 368 of the Public Acts of 1978, as amended, being §333.1101 et seq. of the Michigan Compiled Laws.
- (f) "Comparative group" means the applications which have been grouped for the same type of project in the same planning area and which are being reviewed comparatively in accordance with these rules.
- (g) "Completed application," except as provided in R 325.9229, means the application submitted by the applicant, including any additional information provided by the applicant on or before the date the application is deemed complete pursuant to R 325.9201(3). An applicant may request, and the department may allow, the submission of information after the date the application is deemed complete if the application is not subject to comparative review and if the applicant authorizes an extension to the date a decision must be issued.
- (h) "Completed project" means a project for which the department has determined both of the following:
  - (i) That all activities and construction necessary to offer the services, beds, facilities, or equipment approved by a certificate of need have been executed in compliance with the terms and conditions of the certificate of need.
  - (ii) That the project has been implemented as defined in R 325.9103(b).
- (i) "Force account" means an account established by a formal action of the governing board of a health care facility to commit its own funds for a construction project

undertaken by the health care facility where the construction is managed and supervised by the health care facility acting through its own employees or officers and where the construction is performed by employees of the health care facility and not by contractors or subcontractors.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

### **R 325.9103 Definitions; I, L.**

Rule 103. As used in these rules:

(a) "Incur an obligation" means entering into either of the following:

(i) An enforceable contract or contracts or force account for the construction of, or an enforceable contract or contracts for the acquisition, lease, or financing of, all or substantially all of the project, as determined by the department.

(ii) An enforceable contract or contracts or force account for the construction of, or an enforceable contract for the acquisition, lease, or financing of, a phased project. A phased project is a project accomplished in segments over a period of time in compliance with a project timetable acceptable to the department and approved in the certificate of need.

(b) "Implement," except as provided in R 325.9403(4), means 1 of the following, as applicable:

(i) For a project that involves any of the following, the performance of the first surgical procedure or the treatment of the first partial hospitalization psychiatric patient, as applicable:

(A) Extrarenal transplantation.

(B) Open heart surgery.

(C) Partial hospitalization psychiatric program services.

(ii) For a project that involves any of the following, the signing of an enforceable contract for the acquisition of the equipment:

(A) Extracorporeal shock wave lithotripsy.

(B) Megavoltage radiation therapy.

(C) Positron emission tomography (PET) scanning.

(D) Computed tomography (CT) scanning.

(E) Cardiac catheterization.

(F) Magnetic resonance imaging (MRI).

(G) Air ambulance services. The enforceable contract shall specify that the installation date of the equipment shall be within 24 months after the effective date of the certificate of need.

(iii) For a project that involves nursing home, hospital, or psychiatric beds; hospital beds used to provide neonatal intensive care, including special newborn nursing services; or surgical services, the signing of an enforceable contract for the construction, renovation, or acquisition necessary to develop space to house the beds or operating rooms, as applicable, or the licensure or certification of the beds or operating rooms for use, whichever occurs first.

(iv) For a project that involves capital expenditures other than projects specified in paragraphs (i) to (iii) of this subdivision, when an obligation is incurred or, if the certificate of need expressly defines a series of obligations for discrete components to be incurred over a period of more than 1 year, when the designated obligations are

incurred.

(v) For a project that involves the acquisition of licensed health facilities, the issuance of a new license by the department or the Michigan department of mental health.

(vi) For a project that is not specified in paragraphs (i) to (v) of this subdivision, the occurrence of the implementation event as defined in the applicable certificate of need review standards.

(c) "Letter of intent" means the form used by the department to determine the appropriate application forms for a proposed project.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

### **R 325.9105 Definitions; N to S.**

Rule 105. As used in these rules:

(a) "Nonsubstantive review" means review of a project accepted for review under R 325.9205 and R 325.9206.

(b) "Offer," for purposes of section 22205(3) of the code, means to perform a procedure or serve a patient, as applicable, as authorized by a certificate of need. "Offer" does not necessarily mean full compliance with the terms, stipulations, or conditions to an approved certificate of need.

(c) "Operating costs" means any of the following costs incurred by the applicant:

(i) Salaries and wages.

(ii) Employee benefits.

(iii) Professional fees.

(iv) General supplies and materials.

(v) Purchased services.

(vi) Other costs that, under generally accepted accounting principles, are not properly chargeable as capital costs.

(d) "Predevelopment expenditure" means an expenditure for limited studies, surveys, and other documentation necessary for the preparation and filing of a certificate of need application. Limited studies, surveys, and documentation shall be differentiated from extensive and specific studies, surveys, designs, plans, working drawings, specifications, and other activities necessary to implement the project for which the certificate of need application is sought.

(e) "Qualifying project" means each application in a comparative group which has been reviewed individually and which has been determined by the department to have satisfied all of the requirements of section 22225 of the code, all other applicable requirements for approval in the code and all applicable certificate of need review standards.

(f) "Regional certificate of need review agency" means the agency designated by the department pursuant to section 22226 of the code.

(g) "Single project" means an activity for which a certificate of need is required or, in the case of a capital expenditure, an activity or a group of activities involving a distinct physical area or areas of a health facility or involving the same service or services or department or departments.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996

**R 325.9109 Terms defined in code and certificate of need review standards; establishment of certificate of need review standards.**

Rule 109. (1) Terms defined in the code and certificate of need review standards have the same meanings when used in these rules.

(2) All certificate of need review standards used in making determinations on applications under these rules shall be established pursuant to law.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996

**R 325.9121 Computation of time deadline.**

Rule 121. If any time deadline falls on a nonworking day, the deadline shall be extended to the next department working day.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

**R 325.9123 Designated application dates.**

Rule 123. (1) The designated application date is the date on which an application shall be considered as submitted to the department for purposes of commencing the review of a certificate of need application. An application received at the department's Lansing offices after 5 p.m. on a designated application date shall not be considered timely and shall be deemed submitted on the next designated application date.

(2) For an applicant seeking a nonsubstantive review under R 325.9205 and R 325.9206, the designated application date shall be the department working day on which the application is received by the department.

(3) For an application that is not eligible for nonsubstantive review and not subject to comparative review, the designated application date shall be the first department working day of each month.

(4) For an application that is subject to comparative review, the designated application dates shall be February 1, June 1, and October 1 of each year.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

**R 325.9125 Extensions.**

Rule 125. The department may grant an extension to the date a proposed or final decision shall be issued for an application either pursuant to R 325.9229 or upon receipt of a written request from an applicant that specifies either a date or number of days being requested if, in either case, all of the following requirements, as applicable, are met:

(i) The extension will not result in a delay in the start of the review of similar applications filed subsequently as provided by R 325.9207(2)(a).

(ii) If an application is subject to comparative review, all applicants in the comparative group request an extension of the same duration.

(iii) The extension requested is for not less than 30 days, but not more than 90 days.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

## **PART 2. APPLICATIONS; REVIEWS**

**R 325.9201 Letters of intent; applications; forms; copies; attachments and supplements; content; completeness; additional information; department's authority to consider relevant information not limited; notification of information considered relevant.**

Rule 201. (1) A person applying for a certificate of need for a project, except for projects that are covered by section 22235 of the code, shall simultaneously submit a letter of intent to the department and the appropriate regional certificate of need review agency. The letter of intent shall be on a form supplied by the department. Within 15 days of receipt of a letter of intent, the department, after consultation with the appropriate regional certificate of need review agency, shall notify the person proposing the project of whether the project requires a certificate of need and, if so, shall provide the applicant with appropriate forms. An application form supplied by the department may be submitted at any time. A person may request an informational copy of an application form at any time. A letter of intent shall expire if an application has not been submitted to the department 1 year after receipt of the letter of intent by the department. The department also shall provide the applicant and any person requesting certificate of need review standards with a copy of the current work plan of the certificate of need commission. The work plan shall indicate the timing by which the certificate of need review standards are being revised or are scheduled to be revised by the commission, an explanation of when and how the work plan is periodically modified by the commission, and how an individual can be notified of all commission meetings.

(2) At the time of submission of an application, a person applying for a certificate of need shall simultaneously submit 3 copies of a completed application for a single project to the department and not more than 3 additional copies as required by the appropriate regional certificate of need review agency. An application shall not be considered submitted to the department until it is submitted to the appropriate regional certificate of need review agency. For mental health services, 4 copies of a completed application shall be submitted. The application shall be made on the application forms authorized and provided by the department. The application forms may include requirements for attachments and supplements specified by the department in the forms. An applicant may submit information prepared or collected for other purposes as an attachment. An application shall clearly state the persons, buildings, and properties to which it applies and clearly define the scope, nature, cost, time limits, and other aspects of the proposal in the data included in and with the application as specified by the department in the application forms. A letter of intent, application, or an amendment to an approved certificate of need shall be accompanied by the fee, if any, required by law. A letter of intent or an amendment not accompanied by the required fee, if any, shall not be processed by the department until the required fee, if any, is received. An application not accompanied by the required fee shall not be considered timely and shall be deemed submitted on the next designated application date after receipt of the required fee.

(3) The department shall consider only those applications that are filed on or before the designated application date and, with the advice of the appropriate regional

certificate of need review agency, shall determine whether the application is complete or incomplete. The department shall provide notification of a determination to the applicant and the appropriate regional certificate of need review agency within 15 days of receipt of the application. The applicant shall have 15 days from receipt of the department's notice to provide additional information or otherwise complete the application. If additional information is not requested by the department or the appropriate regional certificate of need review agency, the department shall consider the application to be complete as submitted by the applicant on or before the designated application date. If additional information is requested, the department shall consider the application to be complete as submitted by the applicant on or before the designated application date with the addition of any information provided by the applicant on or before the end of the time period for submission of additional information established in this subrule.

(4) The department, within 15 days of the designated application date, shall have the right to request additional information regarding an individual application to assist in determining whether substantive or nonsubstantive review is indicated and to assist in determining the necessity for comparative review. When the additional information requested is not provided within 15 days or is inadequate, as determined by the department, the department shall make a decision based on the information available.

(5) This rule shall not limit the department's authority to consider all available information relevant to the department's review of an application.

(6) The department's review shall be conducted using the completed application and other information relevant to the decision and pursuant to all applicable provisions in the certificate of need review standards and the code, including information which becomes available or developments which occur after the date an application is deemed complete. Before issuing a proposed decision, the bureau shall notify an applicant of other information upon which it relied in conducting the department's review. If the department relies on information, other than submitted by the applicant in its application, the bureau or department shall cite in the proposed or final decision letter, as applicable, what information was relied on. The department shall make all other information available to the public upon request.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

### **R 325.9203 Determination of covered capital expenditures.**

Rule 203. (1) For purposes of determining whether a capital expenditure is a covered capital expenditure in excess of the threshold for review under the code, predevelopment expenditures shall not be included.

(2) A site acquisition or a donation shall not be considered a covered capital expenditure until it is dedicated to be used to undertake an activity for which a certificate of need is required.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

### **R 325.9204 Data commitments.**

Rule 204. If a certificate of need review standard requires the commitment of Michigan inpatient data base information, in order for the department to consider a data commitment, the hospital committing the data shall be regularly admitting patients and

providing services as of the date the director makes the final decision on an application under section 22231 of the code. Further, the department shall not consider any commitment of Michigan inpatient data base information if a hospital withdrew its commitment before the final decision on an application.

**History:** 1996 MR 3, Eff. Mar. 27, 1996.

**R 325.9205 Nonsubstantive reviews; eligibility.**

Rule 205. (1) A person may submit an application requesting a nonsubstantive certificate of need review on a form supplied by the department.

(2) The department, with the consultation of the appropriate regional certificate of need review agency, shall approve the request as appropriate when the department is satisfied, based on the information supplied on the form supplied by the department and other information made available to it, that all of the following conditions have been met:

(a) The completed project will not result in any of the following:

(i) An increase in the number of beds licensed to the applicant at the licensed site at which the project is proposed.

(ii) The initiation or expansion of a covered clinical service.

(iii) Beginning operation of a new health facility at a site that is not currently licensed for that type of health facility.

(iv) A covered capital expenditure in excess of a covered capital expenditure as defined in the code.

(b) The completed project will meet an already demonstrated and established need as provided by section 22225(1) of the code.

(c) The proposed project is not subject to comparative review pursuant to the code or the applicable certificate of need review standards.

(3) The department shall have the right to accept other projects for nonsubstantive review pursuant to section 22233 of the code. The department shall maintain, and provide a copy of on request, a list of the types of projects eligible for nonsubstantive review under this rule.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

**325.9206 Nonsubstantive review; procedure; time for decision; notice; effect of denial of request for review; department decision to deny review not subject to administrative appeal; review period; submittal of regional certificate of need review agency's recommendations.**

Rule 206. (1) The department shall, after seeking the advice of the appropriate regional certificate of need review agency, determine whether an application requesting nonsubstantive review is complete as provided by R 325.9201(3) and shall concurrently determine whether the application is accepted for nonsubstantive review. The department shall notify the applicant of its decision and send a copy of the decision to the appropriate regional certificate of need review agency. The department's decision to deny nonsubstantive review of a project is not subject to administrative hearing or appeal.

(2) If a request for nonsubstantive review is denied, the application shall be deemed

submitted for the purposes of substantive review on the date of denial and the time frames to determine completeness for substantive review shall be those set forth in R 325.9201(3).

(3) The period for the review of a nonsubstantive application shall be 45 days from the date the application is accepted for nonsubstantive review by the department. The appropriate regional certificate of need review agency shall submit its recommendations with respect to a nonsubstantive application within 30 days after the date the application is accepted for nonsubstantive review by the department so that the recommendations can be included in the department's review process. If new or revised certificate of need review standards applicable to a proposed project become effective before the issuance of a final decision by the director of the department, the review and issuance of proposed and final decisions shall be made in accordance with the provisions of R 325.9229.

(4) The department's review shall be conducted using the completed application and other information relevant to the decision and pursuant to all applicable provisions in the certificate of need review standards and the code, including information which becomes available or developments which occur after the date an application is deemed complete. Before issuing a proposed decision, the bureau shall notify an applicant of other information upon which it relied in conducting the department's review. If the department relies on information, other than submitted by the applicant in its application, the bureau or department shall cite in the proposed or final decision letter, as applicable, what information was relied on. The department shall make all other information available to the public upon request.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

### **R 325.9207 Procedures for substantive individual or comparative project review; scheduling of reviews.**

Rule 207. (1) Projects subject to comparative review shall be designated pursuant to the provisions of section 22229 of the code or the applicable certificate of need review standards. Proposed projects that are not subject to comparative review and are not eligible for nonsubstantive review shall be subject to substantive individual review under this subrule and not subrule (2) of this rule. The bureau shall issue a proposed decision on a certificate of need application within 120 days after an application is deemed completed pursuant to R 325.9201(3). The appropriate regional certificate of need review agency shall concurrently review the application and submit its recommendations to the department within 90 days after the date the department determines the application is complete and the review period has commenced. If new or revised certificate of need review standards applicable to a proposed project become effective before the issuance of a final decision by the director of the department, the review and issuance of proposed and final decisions shall be made in accordance with R 325.9229. A review shall commence on the date an application is deemed complete by the department. The department, with the advice of the regional certificate of need review agency, shall determine if an application filed by each applicant meets all applicable requirements for approval under part 222 of the code.

(2) Both of the following provisions shall apply to projects subject to comparative



review:

(a) Within 30 days after the date that all of the applications are deemed complete, the department, with the advice of the appropriate regional certificate of need review agency, shall place the timely applications into comparative groups and shall notify the appropriate regional certificate of need review agency and each applicant of whether each comparative group will be subject to comparative review. For comparative reviews, the review period shall commence on the date of the notice under this subrule, except that where a proposed decision on a prior review of similar projects, services, or facilities in the same planning area has not yet been issued by the bureau, the review period shall commence only upon the issuance of the bureau's proposed decision on such prior review. Applications which are subject to the provisions of this subrule and which are not subject to comparative review shall be reviewed individually in the same manner as a project submitted under subrule (1) of this rule, with the 120-day and concurrent 90-day review periods commencing on the date on which the department determines that the applications are not subject to comparative review. For each comparative group subject to comparative review, the notice shall also include all of the following findings by the department:

- (i) The projections of need for the proposed facilities, beds, or services.
- (ii) That the total proposed facilities, beds, or services in the comparative group is more than the projections of need.
- (iii) That the applications, when taken together, are mutually exclusive in that, under existing certificate of need review standards, the approval of 1 or more of the applications will necessarily result in the denial of other applications.

(b) If, upon review under subdivision (a) of this subrule, the department determines that an application could fall into more than 1 comparative group, the department shall notify the applicant. The applicant shall notify the department that the project is amended so that the proposed project involves only services, facilities, equipment, or beds relative to a single comparative group or notify the department that the project in its entirety is withdrawn. If the applicant advises the department that it is amending the application, additional information related to the amendment may be submitted in accordance with the provisions of R 325.9201(3). In the absence of notification by an applicant, the original application shall be subject to comparative review in the comparative group determined by the department and the portion of the application involving the other comparative group or groups shall not be considered by the department in its review of the application. The applicant may submit, in accordance with these rules, a separate application for the portion of the application not being considered.

(3) This rule shall not limit the department's authority to consider all available information relevant to the department's review of an application.

(4) The department's review shall be conducted using the completed application and other information relevant to the decision and pursuant to all applicable provisions in the certificate of need review standards and the code, including information which becomes available or developments which occur after the date an application is deemed complete. Before issuing a proposed decision, the bureau shall notify an applicant of other information upon which it relied in conducting the department's review. If the department relies on information, other than submitted by the applicant in its application,

the bureau or department shall cite in the proposed or final decision letter, as applicable, what information was relied on. The department shall make all other information available to the public upon request.

**History:** 1986 MR 6, Eff. July 10, 1986; 1987 MR 7, Eff. July 29, 1987; 1996 MR 3, Eff. Mar. 27, 1996.

### **R 325.9208 Comparative reviews; procedures.**

Rule 208. (1) For a comparative group, the department, with the advice of the regional certificate of need review agency, shall review the applications within the comparative group pursuant to the following procedure:

(a) A regional certificate of need review agency shall concurrently review the applications and submit its recommendations to the department as soon as practicable, but not later than 90 days after the notification of the start of a comparative review.

(b) The bureau shall concurrently review and issue a single proposed decision regarding the applications in the comparative group as soon as practicable, but not later than 120 days after notification of the start of a comparative review. If new or revised certificate of need review standards applicable to a proposed project become effective before the issuance of a final decision by the director of the department, the review and issuance of proposed and final decisions shall be made in accordance with the provisions of R 325.9229.

(c) The bureau, with the advice of the regional certificate of need review agency, shall determine if the application filed by each applicant meets all applicable requirements for approval under part 222 of the code.

(d) The bureau shall rank all qualifying projects in the comparative group as provided by the applicable certificate of need review standards and shall issue a single proposed decision to approve only those applications ranked highest that, in total, do not exceed the needs of the population as determined by section 22225(1) of the code. The remaining applications in the comparative group shall be issued a proposed disapproval as part of the single decision.

(2) The provisions of this rule and R 325.9207 shall not apply to certificates of need applied for and issued under sections 22233 and 22235 of the code.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

### **R 325.9215 Amendments to applications before a proposed decision is issued by the bureau.**

Rule 215. (1) An application scheduled for comparative review shall not be amended after the designated application date established pursuant to R 325.9123, except to the extent that additional information is requested by the department to make the application complete pursuant to R 325.9201 or R 325.9229(6) or as provided for in R 325.9207(2)(b). A person desiring to amend an application shall have the choice of withdrawing the amendment or having the project considered under a new application on a subsequent designated application date.

(2) An application that is not subject to comparative review may be amended by the applicant up to 30 days in advance of the proposed decision date established by these

rules. If the department, with the advice of the appropriate regional certificate of need review agency, determines that the proposed amendment substantially changes the original application and that additional review by the department and the regional certificate of need review agency is required to adequately evaluate the proposal in accordance with the code and these rules, the department shall require, as a condition of the amendment, that the applicant agree to extend the date for proposed decision as required to permit the additional review.

(3) The department may consider new or revised information submitted by an applicant, for an application that is not being reviewed on a comparative basis, within 30 days of the proposed decision date, or at any time after the proposed decision and before a final decision is issued, if an applicant requests an extension to the proposed or final decision date sufficient to allow the department, and the appropriate regional certificate review agency, up to 30 days to review the new or revised information. The department may request from an applicant a longer extension, if necessary, to review new or revised information. The applicant shall also simultaneously submit the new or revised information to the appropriate regional certificate of need review agency. The department shall make the new or revised information available to the public upon request.

(4) If an applicant for a project not originally subject to comparative review proposes to amend the application in such a way as to make it subject to a comparative review, the applicant shall be notified of the need for comparative review and shall have the choice of withdrawing the amendment or having the project considered under a new application on a subsequent designated application date.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

### **R 325.9227 Emergency review; request; denial; submission of formal application.**

Rule 227. (1) A request for an emergency certificate of need review under section 22235 of the code may be made by telegram or other abbreviated written form. The request shall include justification for the project and a statement of the nature and extent of the claimed emergency.

(2) If the department determines that a request filed under subrule (1) of this rule is not covered by section 22235 of the code, it shall so inform the applicant, in writing, within 10 working days of receipt of the request and shall deny the request for emergency review. Pursuant to section 22235 of the code, an applicant for a project granted emergency approval shall submit a formal application for a certificate of need within 30 days of the requested emergency review.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

### **R 325.9229 New or revised certificate of need review standards approved by certificate of need commission.**

Rule 229. (1) Pursuant to section 22215(4) of the code, new or revised certificate of need review standards shall apply to the review of all certificate of need applications for which the director of the department has not issued a final decision as of the effective date of the new or revised certificate of need review standards.

(2) Applications pending a final decision by the director of the department at the time new or revised certificate of need review standards become effective shall be considered as having been submitted subject to the new or revised certificate of need review standards and shall be processed in accordance with subrule (3), (4), (5), or (6) of this rule, as applicable.

(3) If an application is being reviewed on a substantive individual basis and the bureau has not issued a proposed decision as all of the effective date of the new or revised certificate of need review standards, the applicant, within 15 days of the effective date of the new or revised certificate of needed review standards, may request, and the department shall grant, an extension of the date by which a proposed decision must be issued by the bureau under these rules and the code. During the extension period, the applicant may submit to the department and the appropriate regional certificate of need review agency, additional information to demonstrate that the application is in compliance with the new or revised certificate of need review standards. If an extension to submit additional information is requested, the bureau shall issue a proposed decision on the completed application, including any additional information submitted pursuant to this subrule in accordance with the new or revised certificate of need review standards, on or before 120 days after receipt of the additional information. If the applicant does not make a request under this subrule, the bureau shall issue a proposed decision on the completed application reviewed in accordance with the new or revised certificate all of need standards and the proposed decision shall be issued in accordance with the date established pursuant to R 325.9207.

(4) If an application is being reviewed on a substantive individual basis, and the bureau has issued a proposed decision, the applicant may request, within 15 days of the effective date of the new or revised certificate of needed review standards, and the department shall grant, a remand of the review to the bureau. Upon such remand, the date a final decision must be issued by the director of the department is stayed and the applicant may submit, to the department and the appropriate regional certificate of need review agency, additional information to demonstrate that the application is in compliance with the new or revised certificate of need review standards. Upon remand, the bureau shall issue a proposed decision on the completed application, including any additional information submitted pursuant to this subrule in accordance with the new or revise the certificate of need review standards, on or before 120 days after receipt of the additional information. It the applicant does not make a request under this subrule, the director of the department shall issue a final decision on the completed application reviewed in accordance with the new or revised certificate of need standards and the final decision shall be issued in accordance with the date established pursuant to these rules and the code.

(5) If an application is being reviewed on a substantive individual basis, and the bureau has issued a proposed decision, and the applicant has requested a hearing on a proposed decision pursuant to section 22232(1) of the code, regardless of the stage of the hearing, the applicant may request that the matter be remanded to the bureau for further review in accordance with subrule(3) of this rule or, if the applicant does not make a request under this subrule, the applicant shall be allowed 60 days following the effective date of the new or revised certificate of need review standards to augment, for introduction in the hearing, its testimony, evidence, and exhibits in support of its

application with regard to the new or revised certificate of need review standards. If an applicant does not make a request for a remand under this subrule, the department shall submit, to the hearing officer, within 60 days of the effective date of the new or revised certificate of need review standards or 60 days after an applicant has augmented the record, whichever comes later, an analysis of the applicant's compliance with the new or revised certificate of need review standards.

(6) If an application is in a comparative review, regardless of whether it is in the process of being reviewed by the bureau or, in any stage of a hearing, by the director of the department, any applicant in the comparative group, within 15 days after the effective date of the new or revised certificate of need standards, may request, and the department shall grant, either an extension or a remand and extension to the bureau to review and issue a proposed decision on the comparative group in accordance with the new or revised certificate of need review standards. Upon extension or remand and extension, each applicant in the comparative group shall be considered as having made the request and shall be permitted 60 days to submit, to the department and the appropriate regional certificate of need review agency, additional information to demonstrate that its application is in compliance with the new or revised certificate of need review standards. Upon such an extension or remand and extension, the bureau shall issue a single proposed decision on the completed applications, with the addition of any information submitted pursuant to this subrule from the comparative group in accordance with the new or revised certificate of need review standards, on or before 120 days after the last date on which additional information may be submitted under this subrule. If none of the applicants request an extension or a remand and extension, for the review and issuance of a single decision on the comparative group shall be based on each completed application reviewed in accordance with the new or revised certificate of need standards and the decision shall be issued in accordance with the date established pursuant to these rules and the code.

(7) The department shall consider the recommendation of the appropriate regional certificate of needed review agency, if the recommendation is received not more than 30 days before the bureau or department decision dates established pursuant to this rule.

(8) After the director has issued a final decision to disapprove an application that is not subject to comparative review, an applicant may submit, within 60 days of the final decision date, and the department may accept, additional information to demonstrate a need for the project pursuant to section 22225(1) of the code. An applicant shall also simultaneously submit any additional information to the appropriate regional certificate of need review agency. If new or revised certificate of need review standards applicable to the project become effective after the final decision is issued by the director, and if an applicant submits additional information to demonstrate a need for the project for which the disapproval was issued, the director's reconsideration shall be based on the new or revised certificate of need review standards.

(9) If an applicant submits additional information pursuant to subrule(8) of this subrule, the department shall incorporate the additional information into the department's file for that application.

(10) If an applicant submits additional information pursuant to subrule(8) of this subrule, and if the department determines that an application is in compliance with the

requirements for approval in the code and the new or revise to certificate of need review standards, the bureau shall issue a revised proposed decision and the director shall issue date revised final decision in accordance with the applicable procedures for scheduling reviews and decisions set forth in the code and these rules for the type of review applicable to the project.

**History:** 1996 MR 3, Eff. Mar. 27, 1996.

### **PART 3. APPROVAL AND ISSUANCE; DISAPPROVAL**

**R 325.9301 Bureau and department decision to be written; issuance of 1 decision for all applications in comparative review; conditions and stipulations as integral parts of certificate of need; request for hearing deemed request for hearing on entire decision; issuance of final decision.**

Rule 301. (1) The certificate of need proposed and final decisions shall be in writing.

(2) The bureau and department shall issue only 1 decision for all applications, including qualifying and nonqualifying projects, in a comparative review.

(3) Conditions and stipulations are integral parts of the certificate of need. A request for hearing filed pursuant to section 22231 or 22232 of the code related to any part of a decision shall be deemed a request for hearing on the entire decision.

(4) The director of the department shall issue a final decision pursuant to all applicable requirements and provisions of the code.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

**R 325.9303 Effective date of certificate.**

Rule 303. Unless otherwise specified by the department, a certificate of need shall be effective on the date the final approval is issued by the director.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

### **PART 4. TERMS AND CONDITIONS**

**R 325.9401 Validity of certificate.**

Rule 401. (1) A certificate of need shall be valid only as long as there is compliance with the provisions in the final or amended application, including project timetables, except as expressly modified in the certificate of need and the amendments thereto.

(2) As provided by section 20164(2) of the code, the certificate of need is not transferable and shall be valid only for the persons, buildings, and properties stated in the certificate.

**History:** 1986 MR 6, Eff. July 10, 1986.

**R 325.9403 Term of certificate.**

Rule 403. (1) Unless otherwise specified in a certificate of need review standard, a certificate of need shall expire 1 year from its effective date, unless the project is implemented as defined in R 325.9103(b).

(2) The department, upon written request of the applicant, shall have the right to extend the implementation period established in subrule (1) of this rule or in a certificate of need review standard by not more than 6 months if all of the following provisions are satisfied: (a) The terms of the certificate are not changed. (b) Substantial progress has been made. (c) If applicable, an obligation for capital expenditure or establishment of a force account is likely to occur within the extended time period.

(3) The department has the right to make unscheduled periodic reviews and surveys of the project for which a certificate of need is issued and all related documentation to determine whether progress is being made in accordance with the project timetable and estimated costs of the project.

(4) For projects subject to the provisions of R 325.9103(b)(i), (ii) or (vi), a certificate of need review standard may establish a term of the certificate other than as established in subrules (1) and (2) of this rule, in which case the certificate of need shall expire at the end of the time period specified in the standard.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

### **R 325.9413 Amendments to approved certificates of need.**

Rule 413. (1) An applicant may make a written request to the department for an amendment to an approved certificate of need if the project is not a completed project. If the approved certificate of need involves mental health services, a copy of the request and all subsequent information submitted to the department shall simultaneously be submitted to the Michigan department of mental health. After consultation with the appropriate regional certificate of need review agency, a determination shall be made by the department whether the amendment does or does not require another review. The department's decision to require another review shall not be subject to the administrative hearing process set forth in Act No. 306 of the Public Acts of 1969, as amended, being §24.201 et seq. of the Michigan Compiled Laws. A certificate of need issued after a comparative review shall not be amended to increase the scope of the project or to increase the cost of the project. A certificate of need issued after a comparative review shall not be amended to change the method of financing the project, or the terms of financing the project, except where an applicant demonstrates, to the satisfaction of the department, an amendment to change the method or terms of financing offers a less costly alternative to the approved method or terms of financing the project. Unless waived by the department, amendments to a certificate of need shall be subject to the same conditions and stipulations imposed on the original certificate.

(2) An amendment authorizing a change in the method and terms of financing, approved capital expenditures, or operating costs shall be made only in those instances where the facility is able to demonstrate that the need for amendment arises from circumstances beyond its control or the amendment offers a better alternative as determined by the department with the advice of the appropriate regional certificate of need review agency.

(3) A completed project shall not be amended.

(4) The department may request additional information regarding a proposed amendment pursuant to the time periods set forth in R 325.9201(3).

(5) The review period for a request to amend an approved certificate of need shall not be longer than the original review period for the application.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

**R 325.9415 Amendment to approved certificates for an increase in project costs.**

Rule 415. Due to the difficulty in estimating, in advance, finance costs, construction delays, the need for minor construction change orders, and other similar unforeseeable events, an amendment to an approved certificate of need for increased project costs shall not be required if the total amount of excess does not exceed the sum of 15% of the approved project costs up to \$1,000,000.00 and 10% of the approved project costs in excess of \$1,000,000.00.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

**R 325.9417 Certificate timetables.**

Rule 417. (1) An application for a certificate of need shall specify the timetable the applicant will follow in making the health facility, beds, services or equipment available or for beginning and completing construction.

(2) The period of time allowed to begin any construction shall be not more than 24 months from the effective date of approval, except that the department may approve a longer period of time through written amendment to the certificate of need if the department determines that circumstances justify an extension.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

**R 325.9419 Monitoring compliance with approved certificates of need pursuant to section 22247 of the code.**

Rule 419. (1) Upon a determination by the department and applicant is not in compliance with the terms, conditions, or stipulations of an approved certificate of need, the department shall notify the applicant. The department shall also specify the period of time during which the noncompliance occurred. The applicant shall notify all payers of services provided by the applicant that the approved services are not being provided in compliance with the terms, conditions, or stipulations of an approved certificate of need.

(2) In determining the appropriate action to take in accordance with section 22247(2) of the code, the department shall consider the extent and duration of the noncompliance.

(3) The department shall make available, to the public, on request, a list of all certificates of need determined not to be in compliance with the terms, conditions, or stipulations approved in a certificate of need.

**History:** 1996 MR 3, Eff. Mar. 27, 1996.

## **PART 5. ADMINISTRATIVE APPEALS**

**R 325.9501 Hearing request; eligibility; effect.**

Rule 501. (1) An applicant that receives either a proposed decision of the bureau which disapproves 1 or more certificates of need or a notice of reversal by the director of a proposed decision that is an approval may request a hearing, as authorized by the



code, to demonstrate that the completed application filed by the applicant meets the requirements for approval under part 222 of the code.

(2) The filing of a request for hearing shall stay issuance of a final decision during the pendency of the hearing before the department.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

### **R 325.9503 Hearing procedure.**

Rule 503. (1) A request for a hearing is commenced by filing a request for hearing with the director of the department, 3423 North Martin L. King Jr. Blvd., P.O. Box 30195, Lansing, Michigan 48909.

(2) A request for a hearing shall be filed within 15 days of the applicant's receipt of the bureau's proposed decision or receipt of notice of reversal by the director of a proposed decision that is an approval.

(3) A request for a hearing shall be made in writing and shall include a statement of the grounds for a hearing and a clear and concise statement of the facts and law relied on and the relief sought.

(4) A copy of the request for a hearing shall be served upon the appropriate regional certificate of need review agency. In addition, if the request for a hearing is filed by an applicant in a comparative review, a copy of the request for a hearing shall be served by the applicant upon all other applicants in the comparative group.

(5) The hearing shall commence within 90 days from the date that the department received the request for a hearing, unless waived in writing by the parties. Not less than 10 days before the date set in the notice, the department shall serve notice of the hearing, by placing a copy of the notice in the mail to each, upon the person who filed the request for a hearing, the assistant attorney general assigned to represent the department, and all other persons on whom the request for a hearing was required to be served. The first hearing day shall be utilized as a prehearing conference and may be used for hearing preliminary motions.

(6) If more than 1 request for a hearing is filed with respect to the same bureau decision, the hearings so commenced shall be consolidated and shall be heard and decided as a single hearing. A party shall not be severed from a hearing on a comparative review.

(7) In all hearings by aggrieved applicants, the necessary parties are the department and any aggrieved applicant that perfected its request for a hearing in a timely manner. The bureau shall not be required to file a response to a request for a hearing. In comparative reviews, approved applicants are necessary parties to any hearing.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

### **R 325.9505 Service of documents.**

Rule 505. Unless otherwise specified, service of a document upon any party shall be made by personal delivery or by mailing, by registered, certified, or first-class mail, to the last known address of the party or the authorized representative of a party as indicated on the records of the department. Proof of service shall be filed with the department.

**History:** 1986 MR 6, Eff. July 10, 1986.

**R 325.9507 Pleadings.**

Rule 507. All pleadings, including a request for a hearing, shall be on 8 1/2-inch by 11-inch paper and shall contain the certificate of need application number as part of the caption and the case number, if assigned. All pleadings may also be submitted electronically in a mutually agreed upon media.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

**R 325.9509 Form of hearing.**

Rule 509. (1) A request for a hearing shall be titled "In the matter of (name of appellant or appellants)." The caption shall appear at the upper left side of the first page of each filed pleading or document other than an exhibit.

(2) The first page of a pleading or document, other than an exhibit, shall show the case number, if assigned, at its upper right side opposite the caption.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

**R 325.9511 Authorization and assignment of hearing officers.**

Rule 511. The department may designate and authorize hearing officers to be the hearing officers in the hearings.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

**R 325.9513 Adjournment.**

Rule 513. A party may request an adjournment of a scheduled hearing by motion to the hearing officer assigned to conduct the hearing. The hearing officer shall not rule on the request until all other parties have had an opportunity to be heard on the request. However, if all parties agree to the adjournment, then the hearing officer may be advised of the agreement by telephone and may rule on the request immediately.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

**R 325.9515 Hearing officer; conduct of hearing.**

Rule 515. (1) The hearing officer shall govern the conduct of a hearing and the order of presentation of arguments and evidence.

(2) Upon his or her own motion or that of a party, the hearing officer, for good cause, may order that issues be severed and briefed or argued separately.

(3) Sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being §§24.271 to 24.287 of the Michigan Compiled Laws, shall govern the hearings.

(4) Upon written request by a party, the hearing officer may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

(5) Unless the bureau determined that the applicant demonstrated a need for the proposed project pursuant to section 22225(1) of the code, the scope of the hearing shall be limited to demonstrating compliance with section 22225(1) of the code. If the applicant has demonstrated compliance with section 22225(1) of the code, then the

scope of the hearing may involve demonstrating compliance with section 22225(2) of the code.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

**R 325.9517 Withdrawal of request for hearing; agreement.**

Rule 517. At any time before a final decision is issued by the director of the department, a party may withdraw its application or request for a hearing or the party or parties to a hearing may negotiate an agreement disposing of the whole case or a part of the case.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

**R 325.9519 Preliminary motions; prehearing conference.**

Rule 519. (1) Not less than 5 days before the date set for the first hearing in the notice, all preliminary motions shall be filed, unless the hearing officer, for good cause shown, permits the filing of such motions at a later date.

(2) On the date set for the hearing in the notice, the hearing officer shall first hear all pending preliminary motions. Thereafter, all motions are to be made and heard at the discretion of the hearing officer. Motions of a procedural nature shall be decided by the hearing officer as they are made. Motions of a substantive or dispositive nature shall be taken under advisement and decided as part of the hearing officer's proposal for decision.

(3) On the date set for the hearing in the notice, after hearing all pending preliminary motions, if any, the hearing officer shall hold a prehearing conference as provided for in these rules.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

**R 325.9521 Interrogatories; depositions.**

Rule 521. (1) Upon stipulation of all of the parties to a case, written interrogatories or requests for admissions may be served on a party in the same manner as in a nonjury civil case in circuit court.

(2) Depositions shall only be taken for the purposes of obtaining testimony at a hearing. Before taking a deposition, the hearing officer shall find that it is impractical or impossible to have a witness testify at the hearing. When depositions are permitted, they shall be taken in the same manner as in a nonjury civil case in circuit court.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

**R 325.9523 Testimony.**

Rule 523. Upon the request of a party and for good cause shown, the hearing officer may allow the direct testimony of a witness being presented on behalf of the requesting party to be submitted in written form, together with any exhibits to be sponsored by the witness, before hearing. Such direct testimony shall be sworn and notarized, be submitted in typewritten form on 8 1/2-inch by 11-inch paper, and be in question and answer form. The direct testimony of each witness so submitted shall be made a

separate exhibit, and the name and address of the witness, together with the caption of the case, shall appear on the cover sheet. The exhibit shall be served on all parties on a date set by the hearing officer, but not less than 5 days before its introduction at the hearing. Each witness is required to be present at the hearing to introduce his or her written testimony as an exhibit and for cross-examination at such date, time, and place as directed by the hearing officer. In any case, and upon request therefor, a party shall have the right, notwithstanding any provision of this rule, to have any witness on the party's behalf present the party's direct testimony orally before the hearing officer.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.

**R 325.9525 Issuance of final decision by the department director.**

Rule 525. (1) After the conclusion of a hearing, the hearing officer, if other than the director of the department, shall deliver, to the director of the department, the official case file and the hearing officer's proposal for decision. The hearing officer shall serve the proposal or decision upon the parties by first-class or certified mail or by personal service. Each party shall have 20 days from the date of service of the proposal for decision to file exceptions or present written arguments to the director. Exceptions and written arguments shall be served on all parties, who shall have 10 days to file their replies to the exceptions with the director of the department and serve the replies on the parties.

(2) After review of the record or the proposal for decision, exceptions thereto, and replies, if any, the director of the department shall issue a final decision stating the findings of fact, conclusions of law, and the final decision or an order for further proceedings. The director of the department shall serve copies of the final decision upon all parties.

(3) All applications that are part of a comparative review shall be decided in 1 final decision.

(4) The final decision of the director of the department may be appealed only by the applicant and only on the record directly to the circuit court for the county where the applicant has its principal place of business in this state or the circuit court for Ingham county. Judicial review shall be governed by sections 101 to 106 of Act No. 306 of the Public Acts of 1969, as amended, being §§24.301 to 24.306 of the Michigan Compiled Laws.

**History:** 1986 MR 6, Eff. July 10, 1986; 1996 MR 3, Eff. Mar. 27, 1996.